

SCHEDULE

Taluk : Puducherry

Number and Name of Revenue Village : 41-Olandai.

Sl. No.	T. S. No.	Nature of land	Name of the land-owner/ interested person	Extent to be acquired
(1)	(2)	(3)	(4)	(5)
1	Ward-K Block-7 9/2.	Manai	Tmt. Kanagavalli <i>alias</i> Unnamalai Ammal, W/o. Rajagopal Pillai.	H. A. Ca. 0 00 73
			Total ..	0 00 73

(By order of the Lieutenant-Governor)

G. RAGESH CHANDRA,
Special Secretary to Government.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT
(G.O. Rt. No. 229/AIL/Lab./J/2010,
dated 20th December 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 49/2005, dated 14-9-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Anglo-French Textiles and Thiru P. Panchayuthan, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. Mohandass, M.A., B.L., P.G.D.H.R.D.I.
II Additional District Judge,
Presiding Officer, Labour Court.

Tuesday, the 14th day of September 2010

I.D. No. 49/2005

P. Panchayuthan
Code No. 3306 . . . Petitioner

Versus

The Managing Director,
Anglo-French Textiles,
A Unit of Pondicherry Textiles
Corporation Limited,
Pondicherry. . . Respondent

This industrial dispute coming on 8-9-2010 for final hearing before me in the presence of Thiru M.V. Srinivasan, Advocate for the petitioner, Thiru B. Mohandoss, Advocate for the respondent upon hearing both sides upon perusing the case records, after having stood over for consideration till this day this court passed the following :

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G. O. Rt. No. 209/2005/Lab./AIL/J, dated 26-10-2005 for adjudicating the following:

(a) Whether the non-employment of Thiru P. Panchayuthan (Code No. 3306) by the management of M/s. Anglo-French Textile Mill, Pondicherry is justified or not ?

(b) To what relief, he is entitled to?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement, has averred as follows :

The petitioner was working in the respondent company as Jobber-Senior in Weaving Department 'A' Unit with Code Number 03306-C and T.No. L 1907 since from 1965. He served with honour and sincerity with hard work. The petitioner came to know the

reflection of long term service to the mill in the form of asthma due to the dust of cotton which might brought him to severe fever and broncho pulmonary diseases frequently. The said asthma was timely put into medication through the dispensary attached to the mill and the other chest clinics. However, the said disease made him a chronic patient since he has continued his service even after inventing the cause of the disease but for the only reason of foreseen criticism of unemployment situation.

The petitioner has also timely brought the difficulties due to asthma to the mill authorities by way of letters and medical certificates from the valid medical practitioner. In spite of knowledge of those facts, the mill authority has not taken any steps even to take attempt to treat the petitioners disease as Occupational @ as contemplated in Part 'C' of the Schedule-III of Workmen's Compensation Act, 1923 and the Pondicherry Workmen's Compensation (Occupational Disease) Rules, 1965. Hence, he has tendered his resignation to his job on 2-7-1999 to mill authority. Having tendered the resignation the petitioner was to wait for the next course of settlement of service benefits and service his last days of life peacefully. There was no progress of accepting the resignation tendered by him on 2-7-1999 until 20-2-2001. In fact after having tendered his resignation he had gone to various medical persons for medication to the asthma and he became fit and be seem to the work as regular, hence he made a letter, dated 21-2-2001 and by which he has noticed the fact of asthma complication on and from October 1994 and of its impact availed frequent medical leave. Among others, he also requested the mill authority to get him back to job as usual and thereby revoking the earlier resignation by him.

That is the necessary to the management must have looked into the earlier resignation tendered by him or at least to have to intimate the position of their stand in respect of his service status of the petitioner. The petitioner was neglected by means one or other to the better reasons known to him. Due to disregard towards the petitioner on and from 2-7-1999 neither accepting the resignation tendered nor permitting him to work for on and from 21-2-2001 highlight the respondent's ulterior motive to throw out the petitioner from the mill without any benefits. Hence this industrial dispute is filed to direct the respondent to give a sum of ₹ 2,00,000 towards compensation for the suffering with re-employment with full back wages from 2-7-1999 till 2-6-2007 with time to time increments and eligible bonus.

3. In the counter statement, the respondent has stated as follows:

It is admitted that the petitioner joined duty in the respondent mills in Weaving Department —'A' Unit with Code No. 03306-C and token No.L 1907 in the year 1965 and his subsequent promotion as Jobber. But the petitioner had remained continuously absent without authorisation from 5-12-1994 onwards for more than eight days. He was issued charge sheet, dated 14-1-1995 seeking his explanation as to why disciplinary action could not be taken against him. Though the petitioner received the said charge sheet, which was sent through registered post, he failed to give any reply. He also failed to respond to the notice of the enquiry sent by the Enquiry Officer by registered post and therefore, the domestic enquiry was held '*ex parte*' and the Enquiry Officer in his findings, dated 7-12-1995 held the employee to be guilty of the charges on the basis of the evidence and records.

The enquiry findings was also sent to the worker *vide* show cause notice, dated 3-1-1996 seeking his explanation as to why he should not be dismissed for abandonment of service on the basis of the charges proved in the domestic enquiry. However, the employee failed to respond to the notice. All the abovesaid notices were affixed on the mill notice board for the information of the worker. Finally after taking all facts into consideration, the petitioner was dismissed *vide* order, dated 22-2-1998, which was also communicated by registered post to his last known address, which was returned as "unclaimed". The dismissal order was also affixed on the mill notice-board.

The petitioner is habitually unauthorised absent on account of his unauthorised absence from 3-11-1987 to 29-12-1987 for 57 days, for which the petitioner was given warning notice, dated 29-12-1987. Further the petitioner in his letter, dated 3-12-1987, has admitted his unauthorised absence and tendered pardon for his misconduct. As such the punishment of dismissal, dated 22-2-1996 cannot be interfered with, when there is no extenuating circumstances in the past record of service. Hence, the respondent prays for dismissal of the petition.

4. On the side of the petitioner, he examined himself as PW1 and marked Ex.P1 to Ex.P29 were marked. On the side of the respondent, no oral evidence was adduced and Ex. R1 to Ex.R15 were marked.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with back wages from 2-7-1999 till 2-6-2007?

6. On the point:

This industrial dispute is filed by the petitioner against the respondent for his reinstatement in service and for ₹ 2,00,000 as compensation. The contention of the learned counsel for the petitioner is that he was working in the respondent company as Jobber-Senior in Weaving Department and he served with honour and sincerity with hard work and he was suffering from asthma complaint, which was intimated to the respondent, but the respondent has not taken any steps to take attempt to treat his disease as occupational and hence he tendered his resignation to the respondent on 2-7-1999 and there was no response from the respondent till 20-2-2001. The petitioner further contended that after having tendered his resignation, he took treatment with various Medical Officers and he became fit and hence he made a letter, dated 21-2-2001 for frequent medical leave and also requested the respondent to get him back to job as usual, but the respondent neither accepted his resignation tendered nor permitted him to work from 21-2-2001.

7. On the other hand, the contention of the respondent is that the petitioner was irregular in attending the duty and hence he was issued charge sheet, dated 14-1-1995 and though he received the said charge sheet, he failed to give any reply and he also failed to respond to the notice of the Enquiry Officer and hence the domestic enquiry was held "ex parte" and the Enquiry Officer in his findings, dated 7-12-1995 held the employee to be guilty of the charges on the basis of the evidence and records and based on the enquiry report, the petitioner was dismissed *vide* order, dated 22-2-1998.

8. It is the admitted facts that the petitioner was the employee in Weaving Section under the respondent and subsequently he was promoted as Jobber. The contention of the petitioner is that he was suffering from asthma due to the dust of cotton which might have brought him to severe fever and broncho pulmonary diseases frequently. In order to prove the said fact, the petitioner has marked the treatment cards as Ex.P1 to Ex.P9. Perusal of Ex P1 to Ex.P9 reveals that the petitioner has taken treatment at Anglo-French Dispensary as outpatient for various dates in 1994. Further the petitioner has marked the Medical Leave Certificate Ex.P11 to ExP13, which would prove that the petitioner took medical leave for 15 days from 5-12-1994 and 12 days from 20-12-1994, as he was suffering from broncho asthma fever. Hence, the petitioner has clearly proved that he was suffering from asthma complaint.

9. It is the further case of the petitioner that due to asthma complaint, he could not work as before and hence he intimated the said fact to the respondent company, but the respondent company has not treated his disease as occupational as contemplated in Part 'C' of Schedule-III of Workmen's Compensation Act, 1923. In order to prove the said fact, the petitioner has marked his letter sent to the respondent mill as Ex.P13. In Ex.P13 the petitioner has stated that he was suffering from asthma and fever and as there was no ESI Hospital, he took treatment at Primary Health Centre, Mettupalayam and the Government doctor has given certificate to take leave for 31 days from 5-12-1994. The said letter Ex.P13 was received by the respondent mill, as could be seen from the acknowledgment card, which was marked as Ex.P15.

10. On the side of the petitioner, another letter sent by him to the respondent mill was marked as Ex.P17. In Ex.P17 the petitioner has applied Medical Leave for another 15 days from 1-1-1995 to 15-1-1995 and the said letter Ex.P17 was received by the respondent through acknowledgment card, which was marked as Ex.P19. On 2-7-1999 the petitioner tendered his resignation and the said resignation letter was marked as Ex.P20. Hence, the petitioner's version mentioned regarding poor health in the claim statement has been clearly proved by him through Ex.P1 to Ex.P20.

11. The contention of the respondent is that the petitioner had remained continuously absent without authorisation from 5-12-1994 for more than eight days and hence he was issued a charge sheet, dated 14-1-1995 and though he received the said charge sheet, he failed to give the reply and hence enquiry was conducted and based on the enquiry report, he was terminated from the service. To prove the said contention, the respondent has marked Enquiry Proceedings, dated 23-11-1995 as Ex.R1. letter, dated 3-12-1987 sent by the petitioner to the respondent as Ex.R2. Warning notice, dated 29-12-1987 sent by the respondent to the petitioner as, Ex.R3. Internal memo, dated 19-12-1994 as Ex.R4. Charge sheet, dated 14-1-1995 as Ex.R5. Acknowledgment card signed by the petitioner as Ex.R6. Final Enquiry Notice, dated 3-11-1995 as Ex.R7. Report of Enquiry Officer as Ex.R8. Second show cause notice as Ex.R9. Dismissal order as Ex.R10.

12. In this regard, it is pertinent to refer the Medical Leave Certificate Ex.P11, which would show that the petitioner has taken the Medical Leave for 15 days from 5-12-1994 and the said certificate was issued by the Medical Officer, Primary Health Centre, Mettupalayam, Pondicherry. Hence, the petitioner has applied leave on medical ground and it is for the

respondent, who has to sanction or reject the said leave. Instead of that, the respondent management has issued a charge sheet, dated 14-1-1995 treating the petitioner as unauthorised absence from 5-12-1994, conducted the *ex parte* enquiry and based on the findings of the Enquiry Officer, dated 7-12-1995, he was dismissed from his service.

13. The list of documents filed by the respondent management show that already a warning notice was issued to the petitioner for the unauthorised absence from 3-11-1987 to 29-12-1987 for 57 days through Ex.R3, dated 29-12-1987. Again a charge sheet was issued to the petitioner for the unauthorised absence for 8 days from 8-12-1994 through Ex.R5, which was received by the petitioner through Ex.R6. The enquiry notice was issued to the petitioner on 3-11-1995 through Ex.R7. At the time of domestic enquiry, which was held on 23-11-1995 at about 9.30 a.m. the petitioner was not appeared before the Inquiry Officer and hence, an *ex parte* order was passed by the Inquiry Officer and it was held that the unauthorised absence for 8 days from 5-12-1994 was proved through Ex.R8. Subsequently, the second show cause notice under Ex.R9 was issued to the petitioner and finally dismissal order under Ex.R10 was passed on 22-2-1996.

14. On perusal of records, it is proved that the petitioner took leave which made the respondent management to take disciplinary action against the petitioner. But considering the facts and circumstances of the case, whether the order of dismissal by the respondent management is proportionate one or not while passing the order of dismissal, the management should consider past conduct of the workman. In this case, except the charge of absenteeism, there is no serious allegations or charges were found against the petitioner. Even for absenteeism, the petitioner has filed some documents to show that he was suffering from asthma due to working condition of the employment, where he was working. At this juncture, I feel that the dismissal order passed by the respondent management is very much shockingly disproportionate. Hence, the decision laid down by the Hon'ble Supreme Court in the following case is relevant at this point:-

2009 III-LLJ-373 (SC)

"When the Court and Tribunals are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate, the decision of the disciplinary authority can be interfered. Therefore, when the delinquent employee is not of a habitual absentee and seems to have a good track record, and also the alleged misconduct of unauthorised absence is not of gross violation of discipline the major punishment of dismissal can be interfered."

15. The next point raised by the respondent is that the petitioner was dismissed from his service on 22-2-1996 and after a lapse of 11 years the petitioner has moved the Labour Court for his remedy, which is untenable in law. But in this regard, the Hon'ble Supreme Court has held as follows:-

(1999) 6 Supreme Court Cases 82 :

"Industrial Disputes Act, 1947 - S.10 - Delay/laches - Effect, if any, on relief - Employer's plea of delay in seeking reference, unless coupled with proof of real prejudice to him, held, not sufficient to deny relief to the workman - Even if cases of proved delay, relief can be moulded by declining whole or part of back wages - In view of seven years long delay in seeking reference of the dispute regarding termination of service, Supreme Court, although upholding the Labour Court's award for reinstatement and permitting continuity of service, limiting the back wages from the date of issuance of notice of demand till the date of Labour Court's award to 60 per cent. and awarding full back wages only for the succeeding period."

16. Eventhough the petitioner was dismissed by the respondent management on 22-2-1996, this industrial dispute is raised by the petitioner on 27-4-2007. The petitioner is a poor litigant without any employment. The Labour Courts are established to enforce the rights and privileges of the employees, who are the weaker section of the society. Their rights should not be curtailed or suppressed. At the same time, there should not be unlabour practice on both sides *i.e.* by employer and employee. In this case, the dismissal order passed against the petitioner is not proportionate one towards charges levelled against him. But considering the facts and circumstances of the case, this court inclined to award compensation to meet the ends of justice. The petitioner has joined duty in the respondent mill in 1965 and dismissed on 22-2-1996. Considering the continuous service of more than 30 years and I find no other serious allegations or charges against the petitioner hence a sum of ₹ 1,00,000 towards compensation of award can be passed to meet the ends of justice. Accordingly, this point is answered.

17. In the result, the industrial dispute is partly allowed and the respondent is hereby directed to pay the monetary compensation of ₹ 1,00,000 (Rupees one lakh only) to the petitioner. However in the circumstances of the case there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 14th day of September, 2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner : Nil

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner :

- Ex.P1 — Treatment card issued by AFT Dispensary.
- Ex.P2 — Outpatient slip issued by G.H., Pondicherry
- Ex.P3 — AFT treatment card
to
Ex.P9
- Ex.P10 — Medical leave certificate, dated 19-11-1994
- Ex.P11 — Copy of the medical leave application, dated, 5-12-1994.
- Ex.P12 — Medical leave certificate, dated 20-12-1994.
- Ex.P13 — Copy of the petitioner's letter to respondent.
- Ex.P14 — Postal receipt
- Ex.P15 — Acknowledgment card
- Ex.P16 — Medical leave certificate, dated 1-1-1995
- Ex.P17 — Copy of the letter sent by the petitioner to the respondent.
- Ex.P18 — Postal receipt
- Ex.P19 — Acknowledgment card
- Ex.P20 — VRS letters sent by the petitioner to the respondent, dated 29-7-1999.
- Ex.P21 — Postal receipt
- Ex.P22 — Copy of the letter, dated 21-2-2001 sent by the petitioner to the respondent.
- Ex.P23 — Postal receipt
- Ex.P24 — Acknowledgment card
- Ex.P25 — Copy of the legal notice, dated 3-12-2003.
- Ex.P26 — Postal receipt
- Ex.P27 — Acknowledgment card
- Ex.P28 — Legal notice, dated 9-12-2003 sent by the respondent.
- Ex.P29 — Copy of the identity card of the petitioner.

List of exhibits marked for the respondent:

- Ex.R1 — Enquiry proceedings, dated 23-11-1995.
- Ex.R2 — Letter, dated 3-12-1987 sent by the petitioner to the respondent
- Ex.R3 — Warning notice, dated 29-12-1987 sent by the respondent to the petitioner.
- Ex.R4 — Internal memo, dated 19-12-1994
- Ex.R5 — Charge sheet, dated 14-1-1995
- Ex.R6 — A card signed by the petitioner
- Ex.R7 — Final enquiry notice, dated 3-11-1995.

- Ex.R8 — Report of Enquiry Officer
- Ex.R9 — Second show cause notice
- Ex.R10 — Dismissal order
- Ex.R11 — Copy of the legal notice, dated 3-12-2003 sent to the respondent.
- Ex.R12 — Copy of the reply notice, dated 9-12-2003 sent to the petitioner.
- Ex.R13 — Copy of the letter sent by the petitioner dated 15-3-2004.
- Ex.R14 — Copy of the letter, dated 3-4-2004 sent by the respondent to the Labour Officer.
- Ex.R15 — Copy of the failure report, dated 23-3-2005.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 230/AI/Lab./J/2010, dated 20th December 2010)

NOTIFICATION

Whereas, the Award in I.D.No.31/2008, dated 6-10-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Garmac Industries, Villianur and Garmac Workers Union over lock-out has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present: Thiru T. Mohandass. M.A, B.L., P.G.D.H.R.D.I.
II Additional District Judge,
Presiding Officer, Labour Court.

Wednesday, the 6th Day of October 2010

I.D. No. 31/2008

The President/Secretary,
Garmac Workers Union,
Pondy Main Road, Villianur,
Pondicherry. . . Petitioner

Versus

The Managing Director,
Garmac Industries Limited,
1. Villupuram Main Road, Villianur,
Pondicherry. . . Respondent

This industrial dispute coming on 30-9-2010 for final hearing before me in the presence of Thiru V. Govindaradjou, Advocate for the petitioner, Thiru R. Ilanchiliyan and Mrs. R. Thilagavathi, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No. 150/AIL/Lab/J/2008, dated 10-10-2008 for adjudicating the following :—

- (a) Whether the dispute raised by M/s. Garmac Workers Union against the management of M/s. Garmac Industries, Villianur, Pondicherry over lock-out is illegal is justified or not?
- (b) To what relief, the workers are entitled to?
- (c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows :

The petitioner's union is a registered trade union formed for the purpose of welfare of the employees working in the respondent's establishment. The respondent's establishment is engaged in the business of manufacturing and selling dental and medical equipments since 1992 and there are 17 persons working at present in their establishment.

Since the respondent has not followed the provisions of various labour laws, the petitioner's union was started in the month of April 2007. The employees *viz.*, 1. Sadagoban, 2. Manivannan and 3. Arjunan were employed as workers in the respondent's establishment since 2000 and they were the office bearers of the petitioner's union.

On 8-4-2008 after the working hours, the respondent management has unlawfully carried away the jug and fixture mould from inside the factory premises. On 9-4-2008 the workers enquired about the same with the Supervisor and the Managing Director and since they have not given proper reply, the petitioner sent a letter, dated 10-4-2008 to the Conciliation Officer, Labour Department. But on the other hand, on 15-4-2008 during the working hours, the respondent with the help of third parties, wantonly started removing the arc welding and power cutting machines from the factory premises. The workers including the said three workmen objected for the same. Then the respondent has suspended them by issuing show cause notice, dated 15-4-2008 and directed them to give their reply within three days. The said

workers gave reply on 17-4-2008 to the respondent denying the false allegations. Then by a letter, dated 21-4-2008, the respondent management sent a charge sheet against the said workers, conducted the enquiry and based on the enquiry report, they dismissed the said workers. The petitioner has requested the management to reinstate the said workers, but the management failed to do so and went to the extent of declaring a lock-out. The lock out declared by the management is illegal, arbitrary, contrary to law and sheer victimisation of the employees. Hence, this industrial dispute is filed to declare the lock-out called by the management on 17-6-2008 as illegal and consequently to direct the respondent to pay salary, continuity of service and other benefits to the employees of the respondent, besides ordering compensation of ₹ 1,00,000 to each employee of the respondent.

3. In the counter statement, the respondent has stated as follows :—

There are 17 employees engaged by the respondent and out of them, 12 employees formed themselves into an union and through the said union, the workers raised a charter of demands on the management and filed a case before the Conciliation Officer. The management bona fide held negotiations with the union and subsequent to negotiations, a settlement, dated 26-9-2007 was signed and the said settlement was for a period of three years and the management also conferred substantial benefits on the employees. The employees after accepting the benefits, as per the terms of settlement, dated 26-9-2007 and after agreeing not to raise, started trouble to the management by making additional demands and not working as per the agreed procedure and norms and not giving the agreed production. By interfering in the day-to-day affairs of the management, the workers could not concentrate on their work and the resultant position was that the work of the respondent got affected and the respondent suffered financial loss.

On 15-4-2008 the respondent in the usual course of business, was removing two old machines which were obsolete and which were not in use. However, the vehicle carrying the old machines was prevented from going out by the employees namely 1. Sadagopan, 2. S. Manivannan and A. Arjunan. Hence, the respondent initiated disciplinary action against the said three employees and ultimately dismissed them from service on 20-6-2008.

The management again put up notices on 11-6-2008 and 13-6-2008 calling upon the employees to do the allotted work, as the suspension of three employees had nothing to do with the service conditions of all other employees. The employees openly threatened the management that if the suspended three employees were not reinstated in service, then things may take an ugly turn and the employees would not hesitate to use force to redress their grievances. Sensing the hostile mood of the employees and taking into account the safety and welfare of management staff and machineries installed in the respondent's company, the respondent was forced to declare a lock out and accordingly a lock out was declared on 17-6-2008. Hence, they pray for dismissal of the industrial dispute.

4. No oral evidence was adduced on the side of petitioner and the respondent. Ex.P1 to Ex.P15 were marked on the side of the petitioner. Ex.R1 to Ex. R50 were marked on the side of the respondent.

5. The point for determination is:

Whether the industrial dispute can be allowed.

6. On the point:

This industrial dispute is filed to declare the lock-out called by the management on 17-6-2008 as illegal and consequently to direct the respondent to pay salary, continuity of service and other benefits to the employees of the respondent, besides ordering compensation of ₹ 1,00,000 to each employees of the respondent.

7. When the said industrial dispute was pending for argument, the employees by name 1. A. Iyappan (representing for himself and the union), 2. D. Natarajan, 3. Joel Enoch Groney, 4. M. Melchiov, 5. N. Singaravel, 6. B. Vijay, 7. K. Palani, 8. R. Thamizhselvan and 9. A. Dhandapani, who were working under the respondent, were present. Thiru K. Ravishankar, Manager of the respondent and the learned counsel for the petitioner were present. Joint memo with 18(1) settlement was filed by both parties and stated that the petitioner and the respondent have entered into a settlement under section 18(1) of Industrial Disputes Act, 1947 and prayed this court that since both parties have resolved the dispute and entered into a settlement, this industrial dispute may dispose as mutually settled and award may be passed in terms of settlement, dated 4-10-2010.

8. On the side of the respondent, it is submitted that the factory was locked out with effect from 17th June 2008 due to industrial unrest and subsequently was closed with effect from 15th May 2010 and the union raised an industrial dispute regarding the lock out and the same is pending before the Labour Court, Pondicherry in I.D. No.31/2008 and during the pendency of the dispute, it was felt by both parties that the matter relating to the lock out and closure could be resolved and settled amicably and after protracted negotiations both the parties have arrived for an amicable settlement.

Terms of Settlement:

1. The management of M/s. Garmac Industries has agreed to pay a *lump sum* amount to each work as indicated below:-

- (a) A. Iyappan ₹ 2,50,000
- (b) D. Natarajan ₹ 2,05,000
- (c) Joel Enoch Groney ₹ 2,05,000
- (d) M. Melchiov ₹ 2,05,000
- (e) N. Singaravel ₹ 2,05,000
- (f) B. Vijay ₹ 1,75,000
- (g) K. Palani ₹ 1,75,000
- (h) R. Thamizhselvan ₹ 1,75,000
- (i) A. Dhandapani ₹ 1,75,000

On behalf of the aforesaid individual workers, the union has agreed that the above said *lump sum* amount would comprise of arrears of salary, unavailed leave salary, bonus, gratuity, closure compensation, all terminal benefits or any claims that may arise out of I.D. No.31/2008 and all other statutory dues if any, and have further agreed to give individual receipt for the amount being received by them. On receipt of the said amount, they will not make any further claims against the management of the M/s. Garmac Industries towards any monetary benefits directly or otherwise or any other benefits including that of employment, or recruitment in future.

2. The management has agreed to issue experience certificate to each of the abovesaid workers and also to cooperate in facilitating the receipt of PF, ESI or any other statutory benefits from the authority concerned.

3. The union and the respective workers have agreed not to claim any wages or any other benefits for the period of lock out or any compensation for the closure from the management of M/s. Garmac Industries separately and further agreed that the amount being received by them will be considered as full and final settlement of all their claims.

4. Since the settlement is arrived at with a view of solving the issue amicably, both parties have agreed not to raise any fresh dispute and agree to consider the settlement as an end of all their claims.

5. Both parties agreed to file this memorandum of settlement before the Labour Court, Pondicherry with a request that the terms of the settlement be recorded and to pass an award in I.D. No.31/2008 in terms of the above settlement.

9. The joint memo. filed by both parties is recorded. Accordingly, this industrial dispute is closed and the award is passed as per the settlement under section 18(1) of Industrial Disputes Act , 1947. The settlement under section 18(1) of Industrial Disputes Act, 1947 shall form part of the award. However, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 6th day of October 2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner : Nil

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner : Ex.P1.

List of exhibits marked for the respondent :

- Ex.R1 — Letter given by the petitioner, dated 4-5-2007
- Ex.R2 — Copy of the settlement before the Conciliation Officer, dated 26-9-2007.
- Ex.R3 — Letter given by the petitioner to trade union
to
Ex.R19

- Ex.R20 — Telegram sent by the petitioner to the Labour Officer, dated 22-4-2008
- Ex.R21 — Letter, dated 24-4-2008 sent by Conciliation Officer to the respondent
- Ex.R22 — Reply given by the respondent to the Conciliation Officer, dated 29-4-2008
- Ex.R23 — Notice given to the workers, dated 11-6-2008
- Ex.R24 — Show cause notice given to Melchiov, dated 13-6-2008
- Ex.R25 — Show cause notice given to Iyappan, dated 13-6-2008
- Ex.R26 — Show cause notice given to Dhandapani, dated 13-6-2008
- Ex.R27 — Show cause notice given to Natarajan, dated 13-6-2008
- Ex.R28 — Show cause notice given to B. Vijay, dated 13-6-2008
- Ex.R29 — Show cause notice given to K. Palani, dated 13-6-2008
- Ex.R30 — Show cause notice given to Thamizhselvan, dated 13-6-2008
- Ex.R31 — Reply given by Iyappan, dated 14-6-2008
- Ex.R32 — Reply given by Melchiov, dated 14-6-2008
- Ex.R33 — Reply given by Natarajan, dated 14-6-2008
- Ex.R34 — Reply given by K. Pazhani, dated 14-6-2008
- Ex.R35 — Reply given by B. Vijay, dated 14-6-2008
- Ex.R36 — Reply given by A. Dhandapani, dated 14-6-2008
- Ex.R37 — Reply given by Thamizhselvan, dated 14-6-2008
- Ex.R38 — Notice regarding lock out, dated 17-6-2008
- Ex.R39 — Notice to Vijay, dated 20-6-2008
- Ex.R40 — Notice to Natarajan, dated 20-6-2008
- Ex.R41 — Notice to Tamizharasan, dated 20-6-2008
- Ex.R42 — Notice to K. Palani, dated 20-6-2008
- Ex.R43 — Notice to Melchiov, dated 20-6-2008
- Ex.R44 — Notice to Dhandapani, dated 20-6-2008
- Ex.R45 — Notice to Iyappan, dated 20-6-2008
- Ex.R46 — Notice to all the workers, dated 10-7-2008
- Ex.R47 — Letter given by the petitioner to Conciliation Officer, dated 16-6-2008
- Ex.R48 — Reply given by respondent, dated 5-7-2008
- Ex.R49 — Letter given by the petitioner to Conciliation Officer, dated 17-6-2008
- Ex.R50 — Letter given by the respondent to the Conciliation Officer, dated 1-8-2008
- Ex.R51 — List of employees with appointment date.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 231/AIL/Lab./J/2010, dated 21 December 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 1/2004, dated 29-10-2010 of the Labour Court, Karaikal in respect of the industrial dispute between the management of M/s. Soundararaja Mills, Karaikal and Thiru P. Philipraj over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991 it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT KARAIKAL

*Present : Tmt. R. Margaret Rosaline, M.L.,
Presiding Officer, District Judge,
Friday, the 29th day of October 2010*

I.D. No. 1/2004

P. Philipraj .. Petitioner
Versus

The management of Soundararaja Mills,
Rep. by its Vice President (Technical),
Karaikal .. Respondent

This petition coming on this day for final hearing before me in the presence of Thiru V. Ramar, authorised representative for the petitioner and Thiruvalargal M. Elumalai, M. Elanchezhian, M. E. Ilango, V. Rengarajan and R. Thambiraj, Advocates for the respondent, upon hearing both sides and perusing the case records and having stood over till this day for consideration, this court passed the following:

AWARD

This is a reference under the Industrial Disputes Act, 1947 regarding the dispute within the management of M/s. Soundararaja Mills at Karaikal and its workman Philipraj over his non-employment in G. O. Rt. No.10/2004/AIL/AIL/J, dated 27-1-2004.

The following issues are found in the annexure:

- (1) Whether the non-employment of Thiru P. Philipraj is justified or not?
- (2) To what relief, he is entitled?
- (3) To compute the relief, if any awarded in terms of money if it can be so computed?

2. The claimant filed the claim statement with the following averments:

The petitioner joined the respondent textile mills as a Sider in the Carding Department in the year 1985. The petitioner's last drawn wage was ₹ 4812.50 when he was forced to resign on 13-11-2002. The respondent management was forcing the employee to resign for the purpose of engaging contractor labours. The petitioner has rendered unblemished service since his appointment. Due to his ill-health he took ESI leave on 5th and 6th November, 2002 and sent the ESI certificate through a co-worker. But the management refused to receive the same and directed the petitioner to meet the Personnel Manager. But the petitioner continued to be ill, he applied for ESI leave from 7-11-2002 to 12-11-2002 for another three days. As the Personnel Manager wanted to see the petitioner, he went along with the ESI certificate from 13-11-2002 to 15-11-2002. As the Personnel Manager had gone with the Managing Director he met the Vice President (Technical). The said Vice President refused to receive the ESI certificate and ordered the petitioner to resign and get out. However the Vice President refused to hear the pleadings of the petitioner and called the Factory Labour Officer and asked him to get the petitioner's resignation and send him out. In the Office of the Factory Labour Officer, the petitioner was forced to sign the letter of resignation and a stamped receipt on the company's letter head that he received ₹ 2764.50 in full quit. On the very same day that is 13-11-2002 the management gave a letter stating that they have accepted the resignation letter and the gratuity dues will be paid on 14-11-2002. On the same day the petitioner contacted his union leader Balaraman and informed him about the incident. He advised the petitioner to go and report for duty on the next day. On 14-11-2002 the petitioner went and met the Vice President but he was refused to work. He also asked him to sign a receipt of gratuity which the petitioner did not do. Again the petitioner raised a section 2-A proceedings before the Conciliation Officer on 22-11-2002 itself. On 26-11-2002 again he wrote a letter to the union and a copy of the same was sent to the Conciliation Officer reiterating his stand of compulsion to resign. On 10-12-2002, the management sent a reply to the Conciliation Officer stating that there can be no section 2-A dispute because it was not a case of dismissal or discharge but a case of resignation. On 11-8-2003 the petitioner sent a rejoinder to the management's reply. As the conciliation failed, the company gave a failure report on

11-9-2003, On 11-4-2003 when the petitioner went to receive his bonus, the respondent management once again compelled to give a letter of resignation. If at all the petitioner has resigned there is no need for extracting a second letter of resignation. Again on 14-11-2003 itself the petitioner represented against the unjust action and forwarded a letter to the Conciliation Officer. On 27-2-2004 the Government of Pondicherry referred the dispute for adjudication. The denial of the employment is illegal because of the letter of resignation, dated 13-11-2002 was forced out of him. There was no compelling necessity for the petitioner to resign. He was young and had a family to support. The motive of the respondent management was to send the permanent workers out of the job and wanted to make use of the cheap labour for doing work which is unfair. The act of the respondent management amounts to victimization and is unjust and arbitrary. Since the petitioner was on ESI leave the forced resignation obtained from him on 13-11-2002 is contraction to section 73 of the ESI Act and hence the termination was illegal. The denial of employment is without any basis as the resignation was obtained under duress. Hence he prayed for an order for reinstatement of the petitioner with continuity of service and back wage and all other attendant benefits with costs.

3. The respondent management filed its counter statement with the following averments:

At the outset the respondent would raise a preliminary objection that the reference is bad in law and is not maintainable. Under section 2A of the Industrial Disputes Act, 1947, a worker can raise an industrial dispute only if he is discharged, dismissed, retrenched or otherwise, his services are terminated by the employer. In the present case it is the petitioner who resigned his job voluntarily by his letter of resignation, dated 13-11-2002. The respondent management also accepted his resignation and communicated the same to the petitioner. The petitioner also received the communication accepting the resignation by making an endorsement on the copy of the same. Once the resignation has become complete, he cannot try to recoil from the legal position. This question of law may be taken as preliminary issue. Even otherwise the petition is to be dismissed on merits. The allegation that the petitioner was forced to resign on 13-11-2002 is baseless. Even the petitioner has received his wage arrears on 14-11-2002 and left the mill that he would come back and settle his gratuity and other accounts. At the instigation of the outsiders he contradicted his resignation and alleges that he was forced to resign. As per the notice of the Labour Officer it would appear that he only wanted that the respondent management to settle his account. It is not correct to say that the management refused to receive the ESI

leave on 6-11-2002 from the co-worker. The fact is that the petitioner was absent without applying leave from 1-11-2002 to 3-11-2002 and thereafter he sent an ESI certificate for leave from 6-11-2002 to 12-11-2002. The said leave was granted by the respondent. After expiry of the ESI leave the petitioner came to the mill on 13-11-2002 and submitted his resignation to the Vice President of the respondent mill. It is pertinent to point out that if the petitioner was forced to sign in the resignation letter against his will he would not have gone to the mill on 14-11-2002 to receive his wage arrears. The allegation that the Vice President asked him to resign a receipt for gratuity is equally baseless and false. Had it not been a resignation by the respondent voluntarily submitted the petitioner could not have received the letter of acceptance of resignation by making an endorsement. There it is a voluntary resignation pure and simple and not discharge, dismissal or retrenchment or termination of service. Hence it prayed for dismissal of the petition with costs.

4. Now the issues to be decided are—

- (1) Whether the resignation tendered by the petitioner on 13-11-2002 is voluntary?
- (2) Whether the petitioner's non-employment is justified or not?
- (3) Whether the petitioner is entitled for the relief as prayed by him?
- (4) Whether the petitioner is entitled for the computation of the relief, if any awarded in terms of money if it can be so computed?

5. On these issues, the petitioner examined himself as PW1 and marked Ex.P1 to Ex.P10. Ex.M1 to Ex.M5 and Ex.P11 were marked during the cross-examination of PW1. The respondent examined one witness as RW1 and marked Ex.M5 to Ex.M9.

6. *Point No.1:*

The contention of the respondent management is that the petitioner on his own volition has resigned his work on 13-11-2002 and on that resignation the respondent management has accepted the resignation and has directed the petitioner to receive the full and final settlement and the petitioner himself has received the amount and left the services. On the other hand the claim of the petitioner is that he has been compelled to resign his job under duress and he has signed in the resignation letter not on his own volition. It is an admitted fact that the petitioner has signed in the resignation letter which has been duly marked as Ex.M1. It is further admitted by PW1 that Ex.M1 has been written on his own hand. Further the management has marked the receipt given by the petitioner to the tune of ₹ 2764.50 towards full and final settlement due to his resignation as Ex.M5. Ex.M5 is dated 13-11-2002. After having received the settlement amount the petitioner has

chosen to write a letter to the Labour Officer (Conciliation), Labour Department only on 22-11-2002 though PW1 has deposed during his cross-examination that he has sent a letter to the management on the very next day he has not chosen to file either the copy of the said letter or the acknowledgement by the respondent management for having received the said letter. Therefore the management has proved that the petitioner has resigned his job and received even the full and final settlement. The Hon'ble Supreme Court in "J.K. Cotton and Spinning Mills Ltd., Karnataka Vs. State of Punjab -1991 MLJ 39 (SC)" has decided that voluntary retirement is the termination of service by acceptance of the employee's resignation and that would not amount to retrenchment. However resignation tendered due to duress or coercion cannot be considered as resignation. The refusal on the part of the right to employee to resign will amount to bonded labour. Therefore the Hon'ble Supreme Court has decided in this case that termination of service brought about by the acceptance of resignation fell within the expression of voluntary retirement and there cannot be any retrenchment. If at all the petitioner alleges coercion or duress while signing the voluntary retirement it is for him to prove the same before this court. It is the settled law that the plea by workman that the alleged letter of resignation was obtained by the management under coercion, the burden of proof to establish the said plea lies upon him. In the present case, the petitioner has examined himself and marked Ex.P1 to Ex.P10 Ex.P1 is the ESI leave for sickness given to the petitioner for 6-11-2002, 18-11-2002 and 6-11-2002 to 20-11-2002. As far as this exhibit is concerned, it is the only proof of the petitioner having obtained the ESI leave. Ex.P2 is the letter addressed to the Labour Officer which is dated 22-11-2002 which refers about the coercion under which he has signed in Ex.M1. Ex.P3 is a letter sent to the President and the Secretary of the Soundararaja Mills Labour Association. If at all the petitioner has signed under duress in Ex.M1 on 13-11-2002 he ought to have immediately referred the same to the same labour union for taking necessary action. On the other hand Ex.P3 has been sent only on 26-12-2002 to the President of the union. Even the letter addressed to the President of the said union is belated than the letter sent to the Conciliation Officer. Therefore the petitioner has again addressed the Vice President (Technical) of the respondent management on 24-11-2002. After the conciliation has failed and the matter has been referred to the Labour Court *vide* orders passed in Ex.P6. If the petitioner has already signed in Ex.M1 on 13-11-2002 itself there is no necessity for the respondent management to get another resignation letter from the petitioner herein. The perusal of Ex.M9 proves that the petitioner herein has received a sum of ₹ 2,278 as bonus as per section 18(1) settlement from the respondent

management. Therefore it is evident that the petitioner has even received his bonus along with the other workers who have resigned their jobs. The perusal of Ex.M8 reveals that the petitioner has been informed of the bonus payable to him and in turn he has received the same as per Ex.M9. After receiving the said bonus, the petitioner has received Ex.P7 which is dated 24-11-2002, The authorised representative for the petitioner has cited a decision in "Union of India and Another Vs. Wing Commander T. Parthasarathy - 2001(1) S.C.C. 158" wherein the Hon'ble Supreme Court has decided that withdrawal of the resignation tendered by one worker can be withdrawn at any time before the said resignation to have effect from a future date. The facts of this given case law is different because in the present case the petitioner tendered his resignation on 13-11-2002 and the management has accepted the same on the same day and even received his full and final settlement on the same day itself. As such the petitioner has failed to prove that he has resigned his job under coercion or duress. However PW1 during his cross-examination has admitted that he has not given the resignation for the second time to the management. In view of the above discussion, this point is answered to the effect that the resignation tendered by the petitioner on 13-11-2002 is voluntary.

7. Point No. 2 :

In view of the decision of this court on Point No.1, the non-employment of the petitioner is not due to either retrenchment, dismissal or termination by the respondent management. It is purely due to the voluntary resignation submitted by the petitioner himself.

Hence this point is answered to the effect that the non-employment of the petitioner is justified,

8. Point No. 3 :

In view of the findings of this court on Point Nos. 1 and 2, the petitioner is not entitled for the relief as prayed him.

9. Point No. 4 :

In view of the findings of this court on Point Nos. 1 to 3, the petitioner is not entitled for computation of any relief.

10. In the result, the industrial dispute is dismissed.

Dictated to the Stenographer, transcribed by him, corrected and pronounced by me in the open court on this the 29th day of October 2010.

R. MARGARET ROSALINE,
Presiding Officer, Labour Court,
Karaikal.

Petitioner's witnesses:

PW1—Philipraj

Respondent's witnesses: Nil

Petitioner's exhibits:

- Ex.P1 — Xerox copy of the ESI leave sanction
- Ex.P2 — Xerox copy of the letter addressed by the petitioner to the Labour Officer (Conciliation).
- Ex.P3 — 26-11-2002 xerox copy of the representation given by the petitioner to the respondent.
- Ex.P4 — 10-1-2006 xerox copy of the reply sent to the Labour Officer by the respondent.
- Ex.P5 — 11-8-2003 xerox copy of the letter sent by the petitioner to Labour Department, Karaikal.
- Ex.P6 — 11-9-2003 xerox copy of the letter sent by the Labour Officer to the Secretary to Government.
- Ex.P7 — 24-11-2003 xerox copy of the letter sent by the petitioner to the respondent.
- Ex.P8 — 25-7-2003 xerox copy of the letter addressed by the petitioner to the respondent.
- Ex.P9 — 27-1-2004 xerox copy of the Notification.
- Ex.P10 — 19-11-2002 ESI leave card.
- Ex.P11 — Standing order of the respondent company.

Respondent's exhibits:

- Ex.M1 — 13-11-2002 xerox copy of the resignation letter.
- Ex.M2 — 13-11-2002 xerox copy of the acceptance of resignation.
- Ex.M3 — 22-11-2002 xerox copy of the notice issued by the Labour Officer, Karaikal.
- Ex.M4 — 30-10-2003 xerox copy of the letter given by the petitioner.
- Ex.M5 — 13-11-2002 xerox copy of the letter issued to the petitioner by the respondent.
- Ex.M6 — 10-12-2002 xerox copy of the reply sent by the respondent to the Labour Officer, Karaikal.
- Ex.M7 — 11-9-2003 xerox copy of the report sent by the Labour Officer to the Government of Puducherry.
- Ex.M8 — 8-11-2003 xerox copy of the letter sent to the petitioner by the respondent.
- Ex.M9 — Xerox copy of the bonus acquittance signed by the petitioner.

R. MARGARET ROSALINE,
Presiding Officer, Labour Court,
Karaikal.